IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2134 OF 2006

Chatur Tahilram Kripalani .. Petitioner
Orig. Plaintiff

Versus

1. Mrs. Chandra Bhavnani
2. Mr. Mohan Vaswani (deceased)
2a) Harish Vaswani
2b) Naresh Vaswani
2c) Surseh Vaswani
2d) Ramesh Vaswani
3. Mr. Hiro Vaswani
4. Bank of Baroda
5. Bank of India Ltd.
6. ABN AMRO Bank
7. Moti Parsram Shahani
8. Pratap Uttamsingh
9. Mira Co-operative Hsg.Soc.Ltd..Respondents

Mr.C.T.Kripalani Petitioner present in person
Smt.Meena Doshi for Respondent Nos. 7 and 8
Shri Vishal Kanade for Respondent No.5.
Ms.Gajala i/b. M/s.RES Legal for Respondent No.6

CORAM : S.R. SATHE,J.
DATED : 07/08/2007

ORAL JUDGEMENT :-

1. Rule returnable forthwith.

2. Heard the Petitioner who is a practicing lawyer and party in person. Also heard Smt. Meena H. Doshi, learned Advocate for the Respondent Nos. 7 and 8 and Shri Vishal Kanade learned Advocate for Respondent

No.5.

3. The Petitioner-original Plaintiff in Special Civil Suit No.651 of 2004 has filed this Writ Petition to challenge the order passed by Second Joint CJSD, Pune below Exh-15,32 and 47 in Special Civil Suit No.651 of 2004 whereby Plaintiff was directed to join Sadhu Vaswani Mission and the executors of the will as party to the said suit.

4. The brief facts giving rise to this Petition are as under :-

The suit property described in detail in the plaint was owned by one Mrs. Lachmi Gobindram Bhavnani, the maternal aunt of the Petitioner. She died on 31/12/2003. According to Petitioner, Mrs. Lachmi Gobindram Bhavnani died intestate and the original Plaintiffs being heirs of late Mrs. Lachmi Gobindram Bhavnani filed suit for the administration and partition of the estate of late Mrs. Lachmi Gobindram Bhavnani. Prior to filing of the suit, Petitioner had issued public notice but nobody responded to the said notice. Hence, they filed suit in May-2004.

Subsequently, Petitioner came to know that Dr.Laxmikant R. Bhojwani, Mr.Suresh P. Advani and Mr. Atul Relwani had filed Miscellaneous Application No.335 of 2004 on 28/04/2004 for probate under section 222 of the Indian Succession Act, in the court of the IInd Joint CJSD Pune wherein the said persons had submitted that they are executors of the will executed by late Mrs. Lachmi Gobindram Bhavnani. However, Petitioner and the other alleged heirs of Mrs. Lachmi Gobindram Bhavnani were not served with the notice of the said probate proceedings. According to petitioner, present respondent Nos.1 to 3 are also other legal heirs of late Mrs. Lachmi Gobindram Bhavnani and they have been joined as proforma defendants.

5. The defendant Nos. 4 and 5 are nationalized banks. As they did not submit necessary information regarding accounts and lockers of late Mrs. Lachmi Gobindram Bhavnani, they were impleaded as defendants in the above mentioned suit. Similarly, Respondent No.6 is a foreign banking company in which late Mrs. Lachmi Gobindram Bhavnani had a Demate account and respondent No.7 claimed that he is a nominee of late Mrs. Lachmi

Gobindram Bhavnani for the said account. At his instance, respondent No.6 transferred the securities held in the Demate account to the other account opened by the nominee i.e. respondent No.7. It is the Petitioner's case that though respondent No.7 was not having any interest in the property left by late Mrs. Lachmi Gobindram Bhavnani he claimed inheritance by nominee in respect of the said Demate account and also alleged in his Written Statement that late Mrs. Lachmi Gobindram Bhavnani has bequeathed of her property to Sadhu Vaswani Mission except the aforesaid depository account.

6. The Defendant No.8 was also impleaded in the said suit as he refused to disclose and hand over the estate of the deceased to the Petitioner. The defendant No.8 however informed the Petitioner that keys of the flat belonging to late Mrs. Lachmi Gobindram Bhavnani namely flat No.330, building No.16, Mira Co-operative Housing Society Limited, Shankarseth Road, Pune are with him and asked the Petitioner to approach executors of the will. Subsequently, on 30/10/2004, respondent No.8 filed pursis and expressed his willingness to hand

over the keys of the suit premises to the Hon'ble Court/Nazir. When the Petitioner asked the respondent No.9 Co-operative Housing Society to transfer shares and flat belonging to late Mrs. Lachmi Gobindram Bhavnani to Petitioner, they refused to do so.

7. When respondent No.8 filed pursis and showed willingness to deposit keys of the flat with the Court, defendant No.7 filed an application dated 07/01/2005 Exh-32 and alleged that defendant No.8 might have filed the said pursis as a result of collusion between Plaintiffs and him or that he must have been forced for signing the application Exh-15. The defendant No.7 submitted that Sadhu Vaswani Mission is in occupation of the suit flat on the basis of will and therefore prayed that Plaintiff be directed to join Sadhu Vaswani Mission and the executors of the will of late Mrs. Lachmi Gobindram Bhavnani as party to the above mentioned suit filed by the present petitioner.

8. The said application was strongly opposed by the Plaintiffs. They contended that defendant No.7 has no right, title and interest in the property of late

Mrs. Lachmi Gobindram Bhavnani. Moreover, the executors and the alleged beneficiaries under the alleged will had not moved the Court for impleading them as party and Sadhu Vaswani Mission is not at all necessary party to the said suit. Plaintiffs, therefore, prayed for the dismissal of the application.

9. The learned Trial Judge after considering the material produced on record and hearing the arguments advanced on behalf of both the parties came to the conclusion that Sadhu Vaswani Mission is necessary party to the suit filed by the Petitioner and therefore, directed Plaintiffs to implead Sadhu Vaswani Mission and the executor of the will as party to the said suit and accordingly disposed the application Exh-15 & 32 by common order.

10. Being aggrieved by the said order the Petitioner filed application for review of the said order but the same also came to be dismissed. Hence, the Petitioner has filed the present Petition and prayed that the order passed by the learned Trial Judge directing the Plaintiff to implead Sadhu Vaswani

Mission and the executors of the will in the suit be set aside and the application Exh-15 and 32 be rejected.

11. In this petition before me, the Petitioner has urged only three points. Firstly, he submitted that prior to the filing of the suit when he had issued public notice neither Sadhu Vaswani Mission nor the executors of the will had given any reply and objected Plaintiff's claim and as such, he was justified in not impleading them in the suit. Secondly, he canvassed before me that in a probate proceedings Sadhu Vaswani Mission and executors are parties. In the present suit Sadhu Vaswani Mission is not a necessary party and if finally Court comes to the conclusion that Sadhu Vaswani Mission and the executors of the alleged will are necessary parties then the Court may dismiss the suit for non joinder of necessary party, but at this stage, Plaintiff can not be compelled to join Sadhu Vaswani Mission and executors of the alleged will as defendants. In order to substantiate this proposition he has placed reliance on a case **Chitralekha Builders**

and another V/s. G.I.C. Employees Sonal Vihar Co-operative Housing Society Ltd. and ors. 2005 (4) Maharashtra Law Journal 360.

12. Petitioner also strenuously argued before me that after filing of the pursis by defendant No.8, the defendant No.7 in fact did not press his application Exh-32. So, according to him under such circumstances, there was no need for the learned Trial Judge to direct the Plaintiffs to join Sadhu Vaswani Mission and executors of the Will as defendants.

13. As against this, Smt. Doshi, learned Advocate for Respondent No.7 and 8 submitted that when the certified copy of the registered Will which is on record shows that the flat in question is bequeathed to Sadhu Vaswani Mission and the same is in their possession, Sadhu Vaswani Mission is necessary party and no effective decree can be passed in the absence of Sadhu Vaswani Mission as well as executors of the will.

14. She also submitted that merely because

defendant No.7 did not press his application in view of the pursis filed by the defendant No.8, it can not be said that Court was precluded from passing order regarding joining of necessary parties, in view of the provisions of order-1, Rule-10(2) of the Code of Civil Procedure (hereinafter referred to as CPC). In support of her submission she has placed reliance on a case **KISAN UCHATTAR MADHYAMIK VIDYALAYA SAMITI V/S. IIIrd ADDL. DISTRICT JUDGE, DEORIA AIR 1989 ALLAHABAD 168 and Milind Dattatraya Sugavekar V/s. Municipal Corporation Greater Bombay 2006 (1) ALL MR 488.**

15. From the material on record and the submissions made before me it is very clear that suit flat was owned by late Mrs. Lachmi Gobindram Bhavnani. Question arises whether Mrs. Lachmi Gobindram Bhavnani died intestate as alleged by the Plaintiff (present Petitioner) or whether she had executed a will. Copy of which is produced on record. It is an admitted fact that probate proceedings have been initiated and the same are pending in the same Court in which the present suit is pending. Admittedly, necessary citations in the

probate proceedings are also issued. It is not in dispute that at present the Plaintiffs are not in actual possession of the suit flat. So, one thing is certain that in order to succeed in the above mentioned suit filed by the present Petitioner, he and other alleged heirs of late Mrs. Lachmi Gobindram Bhavnani have to prove that Mrs. Lachmi Gobindram Bhavnani died intestate. Presently, the suit flat appears to be in possession of Sadhu Vaswani Mission on the basis of the alleged Will executed by late Mrs. Lachmi Gobindram Bhavnani. So, considering these aspects one has to decide whether this is a fit case where Court was justified in directing the present petitioner to implead Sadhu Vaswani Mission and executors of will in the suit filed by Plaintiffs wherein administration and partition of the estate of late Mrs. Lachmi Gobindram Bhavnani is claimed.

16. In order to decide the above posed question it would be worthwhile to see the relevant provision of CPC i.e. Order-1, Rule-10(2) of CPC. It runs as follows:-

10. Suit in name of wrong Plaintiff –

(1).....

(2) ***Court may strike out or add parties –*** *The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.*

17. From the bear wording of Order-1, Rule-10(2) of CPC it is very clear that it empowers the court to implead any person as party suo motu, who ought to have been joined, whether as Plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Once this position is admitted, the point raised by the Petitioner that defendant No.7

subsequently did not press application for joining Sadhu Vaswani Mission as necessary party becomes irrelevant. Merely, because defendant No.7 at later stage did not insist his earlier prayer that does not mean that Court had no power to consider the question which was raised by the defendant No.7. So, there is no substance in the argument advanced by the Petitioner that as defendant No.7 had not pressed his application, there was no necessity for the Court to pass any order at Exh-32.

18. We can not ignore the fact that the expression "to settle all questions involved" used in Order-1, Rule-10(2) of CPC, is susceptive of liberal and wide interpretation so as to adjudicate all the questions pertaining to the subject-matter thereof. The Parliament in its wisdom while framing this rule must have thought that all the material questions common to the parties to the suit and to the third parties should be tried once for all and so the Court is clothed with the power to secure the aforesaid result with judicious discretion to add parties, including third parties. This has been so held in **Abdul Jaleel V/s. Aishabi AIR**

1992 KARNATAKA 380. So, while considering the provisions of order-1, Rule-10(2) of CPC it is necessary for the Court to find out precisely as to whether the party who is to be impleaded can be said to be a necessary party. It is well settled that necessary party is one without whom no order can be effectively made. Proper party is one whose presence is necessary for complete and final decision of the question involved in the proceedings. Therefore, the addition of parties would depend upon the judicial discretion which has to be exercised, in view of the facts and circumstances of a particular case. The person to be joined must be one whose presence is necessary as party. It is needless to say that if a person is legally interested in the action or if litigation may lead to result which will affect him legally by curtailing his legal rights, he has to be impleaded in the proceedings. Keeping in mind, these principles if we see the facts of the present case then we find that defendants have produced on record copy of the registered Will alleged to have been executed by late Mrs. Lachmi Gobindram Bhavnani and as as per the said Will Sadhu Vaswani Mission are in actual possession of

the suit flat. So, when Petitioner-Plaintiff is claiming right, title and interest and administration and partition of the entire estate of late Mrs. Lachmi Gobindram Bhavnani which includes suit flat, then obviously, Sadhu Vaswani Mission has to be impleaded in the said suit because whatever order that will be passed in the suit filed by the Plaintiff, it would certainly affect the legal rights of Sadhu Vaswani Mission. So, under such circumstances, merely because Petitioner says that in case it is proved that Sadhu Vaswani Mission is necessary party then the Court may dismiss the suit, it can not be said that Court is not empowered to consider the other consequences that may follow and take steps to avoid the said consequences and pass necessary order in that behalf.

19. It is true that Plaintiff is the dominus litis and as a result, therefore, no person should be impleaded as party to the suit to whom the Plaintiff opposes. Plaintiff is the master of the suit. He can choose parties to the suit as well as forum. He can not normally be compelled to fight against the party to whom he does not wish to fight and against whom he does not seek any relief. However, while considering this

position, one must bear in mind as to why the legislature thought it fit to give suo motu powers to the Court in connection with impleading parties.

20. Legislature thought that in case Plaintiff is permitted as a rule to choose his own opponent and the Court has no control on the said point then it may happen that collusive decree is obtained against the real owner or interested person by keeping him in dark and without impleading him as a party and when decree will become final, at such late stage, whose rights are seriously affected may come to Court and then again there would be multiplicity of proceedings and harassment to the parties. So, in order to avoid such unwarranted serious situation the legislature has drafted Order-1, Rule-10(2) provision and has given wide powers to the Court to implead any party when Court under the circumstances of the case finds it necessary.

21. In the instant case, there are in fact two separate proceedings pending before the same Court. One is suit and other probate proceedings. In both the

matters the moot question is whether late Mrs. Lachmi Gobindram Bhavnani died intestate and if not whether the alleged will executed by her has created right, title and interest in favour of Sadhu Vaswani Mission. So, in order to consider the above issue effectively and once for all, the learned Trial Judge felt it necessary and in my considered view rightly so, to direct the Petitioner-Plaintiff to join Sadhu Vaswani Mission and executors of the will as party to the suit. In a case **Amit Kumar V/s. Pharida Khatun 2005 (3) Maharashtra Law Journal 330** the Apex Court has held that the power of court to add party to proceeding can not depend solely on the question whether the said party has interest in the suit property. The question is whether the right of that person may be affected if he is not added as a party. Such right, however, will include necessarily an enforcible legal right. In the case at hand, there is sufficient prima facie material on record to show that presence of Sadhu Vaswani Mission and executors of the alleged Will, before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle

all the questions involved in the suit. It will also help to avoid multiplicity of proceedings. Sadhu Vaswani Mission is in actual possession of the property and so their presence before the Court in the said suit is necessary.

22. So, I have no hesitation to hold that the order passed by the learned Trial Judge directing the Petitioner-Plaintiff to join Sadhu Vaswani Mission and executors of Will as party to his suit is legal and correct. There is absolutely no necessity to interfere with the said order.

23. In this view of the matter, there is no substance in this Writ Petition.

Hence, Writ Petition is rejected.

(S.R. SATHE,J.)